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Surname [REDACTED]

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: AUG 28 2000

Employer Identification Number:
[REDACTED]

Contact Person:
[REDACTED]

Contact Number:
[REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion and the facts upon which it is based are set forth below.

The information submitted indicates that you were authorized under the laws of the State of [REDACTED] and that you were created and established by the [REDACTED] City Council under [REDACTED] City [REDACTED] on [REDACTED]. You filed your application for recognition of exemption, Form 1023, on [REDACTED] which is more than 15 months from the end of the month in which you were organized. In your application, you state that you want us to consider your application as a request for recognition of exemption under section 501(c)(3) of the Code from the date your application was received and not retroactively to the date you were created or formed.

Sections 7-13 and 7-14 of your creating ordinance state:

"The commission shall represent an official partnership between city and county government and the private business community. The commission shall manage and coordinate the comprehensive and coordinated redevelopment of the center city area as the economic, cultural and governmental heart of the city and county. In formulating and implementing plans the commission will consult with public agencies and private interests within the center city area, and will integrate the economic, physical and environmental needs of business and residential district within the center city area. The commission shall act as the district management corporation for District No. II and as mall management agency for District No. I so long as such district shall exist. The commission shall act as a vacant property review commission for the center city area pursuant to [REDACTED]. The commission shall perform such other duties and functions as shall be delegated to it from time to time.

"The commission, as now created within this article, is hereby appointed as the regulatory body for District No. 1 for the purpose of regulating businesses shops, food establishments, arts and crafts, vehicular traffic, and any and all other services as may be offered on the Main Street Mall for so long as such district shall exist. The commission is hereby appointed as the district management

[REDACTED]
corporation for District No. II pursuant to [REDACTED] as the same may be amended or any successor statute thereto."

Section 7-17(a)(7) of your creating ordinance provides that your powers include assisting and acting as the agent of your president in exercising the powers and functions delegated to your president pursuant to section 13-2-107 of the [REDACTED] and your creating ordinance.

Section 7-17(a)(8) of your creating ordinance provides that your powers include serving as the vacant property review commission for the center city area pursuant to section [REDACTED] as same may be amended, and to exercise any and all powers and authority delegated to you in such capacity or otherwise inherent in such capacity. Section 7-19(c) provides that in this regard you shall have powers to make a written determination of blighting or deterioration within the center city area, to certify such property to the City Council of the [REDACTED] or the [REDACTED] Board of Commissioners, acting singularly or jointly, as blighted or deteriorated and to exercise any and all powers and authorities delegating a vacant property review commission pursuant to [REDACTED]

Section 7-17(b)(4) of your creating ordinance provides that your functions include conducting the business necessary for the management and operation of the Main Street Mall, including, but not limited to, promotions, maintenance, security transportation and parking coordination, special events, and any other function in connection with the operation of the mall.

Section 7-18(b) of your creating ordinance, concerning slum clearance and redevelopment, provides that your president is designated and appointed to exercise the powers prescribed by the provisions of this section pursuant to [REDACTED]. Section 7-18(c) provides that whenever a petition is filed with your president by a public authority or by at least five residents of the [REDACTED] charging that any structure within the center city area is unfit for human occupation or use, or whenever it appears to the president (on his/her own motion) that any structure within the center city area is unfit for occupation or use, your president shall, if his/her preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner and any parties in interest of such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before your president (or a designated agent) at a place therein fixed, that the owner and parties in interest shall be given the right to file an answer to the complaint and appear in person, or otherwise, and give testimony at the place and time fixed.

Section 7-23 of your creating ordinance provides that enforcement of any power or authority granted you under your creating ordinance or as mall management agency of District I or district management corporation of District II or any rules or regulations issued by you pursuant to such authority shall be delegated by you to any employee of your staff, who may obtain a summons through the city municipal court, and also to any city police officer, who may issue a summons or misdemeanor citation or effect a physical arrest for violations. In addition to the remedies provided by your creating document, you may issue an order requiring any violator to cease or suspend the facility causing such violation and/or initiate court proceedings to enjoin such violations.

In your application, you state that your mission is to improve the economy of [REDACTED] and [REDACTED] by coordinating an aggressive public/private program to promote the redevelopment and economic growth of the Central Business Improvement District. You state that you act as an umbrella agency working in conjunction with your four affiliated entities - [REDACTED]

[REDACTED]
[REDACTED] - to provide incentives and assistance to encourage economic growth and development within the Central Business Improvement District. You state that you share facilities and staff with these organizations, you appoint the Board of Directors of [REDACTED] you appoint and administer the [REDACTED] and substantially all of the directors of the [REDACTED] are also your directors. You list the following activities as comprising approximately 70% of your total activities, each activity being at least 10% of your total activities:

- (1) serving as an information clearinghouse for downtown activities,
- (2) actively encouraging redevelopment through adaptive reuse and new project construction,
- (3) advising the city and county governments on downtown issues,
- (4) recommending and coordinating needed public improvements,
- (5) managing the Main Street Mall including coordinating maintenance, landscaping, and supervising regulations and activities, and
- (6) monitoring maintenance of public and private spaces.

In your letter dated [REDACTED] you state that you promote, encourage, manage, and coordinate the redevelopment of [REDACTED] center city area. You state that under your authority as a district management corporation, you were designated by the [REDACTED] to act as the district management corporation for District No. 11 and as the mall management agency for District No. 1. You state that you act only as an advisory board (not as a regulatory or enforcement agency) for the purpose of administering activities, making improvements, and providing services and projects within the central business improvement district. You state that your bylaws comply with the organizational test of section 1.501(c)(3)-1(b) of the Income Tax Regulations except that they do not specifically state that you will be limited to activities under section 501(c)(3) of the Code and that your bylaws and enabling statutes do not specifically state what is to become of your assets upon dissolution. You state that your stated purposes, however, clearly show that you are not authorized to perform any type of activity that is not in furtherance of your public purpose, and that if these two items are critical, your bylaws can be amended to more fully comply with all the requirements of the regulations.

You state that under [REDACTED] the state authorized the governing body of a municipality to appoint a "Public Officer" and granted such appointed individuals the necessary powers to rid an area of slums and deteriorated property. You state that one of the Public Officers appointed by the [REDACTED] City Council was your president, and that your president in his individual capacity (and not in his representative capacity on your behalf) can file complaints and/or issue orders to repair or demolish the property. You state that your president is your paid employee and is not a member of your board and that, contrarily, that person is authorized to perform the slum clearance and redevelopment without any action, interference, recommendation, or input from your board of directors. You add that, for the record, your president has never exercised his Public Officer authority.

You state that under [REDACTED] the [REDACTED] City Council, under the provisions of [REDACTED] granted you the right to review vacant

[REDACTED]

property, and to certify blighted or deteriorated property to city and county officials. You state that you, yourself, do not possess the power to require repairs or the demolition of a building, but that you act only in an advisory capacity and have no powers that would be considered as regulatory or enforcement powers. You state that any final decision would be the responsibility of the [REDACTED] City Council and not you.

You state that the management of the main street mall consists of advertising and promoting the mall, scheduling special events to attract visitors and customers to the mall, facilitating parking and security for special events, coordinating with the Department of Public Works, etc., and that all permit fees and assessments are used to offset these costs and are not a profit making activity for you. You also state that the management of the mall represents an insignificant (less than 10%) portion of the duties you perform.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, or educational purposes so long as no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes, and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government or to a state or local government, for a public purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of any exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as

[REDACTED]

limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged, advancement of education or science, and promotion of social welfare by organizations designed to lessen neighborhood tensions or to eliminate prejudice and discrimination.

Rev. Rul. 60-384, 1960-2 C.B. 172, holds that a wholly-owned state or municipal instrumentality that is a separate entity and a counterpart of an organization described in section 501(c)(3) of the Code may qualify for exemption under that section. However, the revenue ruling holds that an organization would not be a clear counterpart of a section 501(c)(3) organization if it is clothed with powers beyond those of an organization described in section 501(c)(3). Examples of such powers, as set forth in the revenue ruling, are enforcement or regulatory powers exercised in the public interest, such as health, welfare, or safety.

Rev. Rul. 74-14, 1974-1 C.B. 125, holds that a public housing authority incorporated under a State statute conferring upon it the power to conduct examinations and investigations, to administer oaths, issue subpoenas, and make its findings and recommendations available to appropriate agencies does not qualify for exemption under section 501(c)(3) of the Code. The revenue ruling states that the organization's investigatory powers are to be exercised for the purpose, among others, of collecting information and making it available to appropriate agencies for use in furthering and enforcing local ordinances regarding planning, building, and zoning matters. The revenue ruling concludes that such powers are regulatory or enforcement powers of the kind referred to in Rev. Rul. 60-384, supra, and therefore the organization is not a clear counterpart of an organization described in section 501(c)(3).

The information you have submitted fails to establish that you are described in section 501(c)(3) of the Code. A portion of your powers with regard to both the vacant property review and slum clearance are considered to be police powers as described and discussed in Rev. Rul. 74-14, supra. Regardless of whether you have exercised your powers that are allowed to you under [REDACTED] or [REDACTED], you possess such powers which are outside the scope of section 501(c)(3) of the Code. Also, your president was named as the Public Officer under the [REDACTED] with all the attendant powers of that position as discussed under the statute, not the individual person who happened to be your President at the time of the appointment. When the person who is currently your president leaves that office, your new President will be the person named as the Public Officer. You are empowered to assist and act as your President's agent in carrying out these police powers. Such powers, along with your investigatory, enforcement, and certification powers under the vacant property statute, disqualify you from recognition of exemption under section 501(c)(3) as provided in Rev. Rul. 60-384, supra.

Further, you are not organized exclusively for one or more exempt purposes under section 501(c)(3) of the Code because (1) you are not organized for purposes limited to one or more purposes under section 501(c)(3) by your organizing instrument [REDACTED] (2) by the terms of your organizing instrument, your purposes are broader than the purposes specified in section 501(c)(3), and (3) your assets are not considered to be dedicated to an exempt purpose within the meaning of section 501(c)(3) in the event of your dissolution. Amending your bylaws, as you have suggested, will not correct any of these defects because your bylaws are not considered to be your organizing instrument.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax as an organization described either in section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 and you are required to file federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate state officials will be notified of this action in accordance with section 6104(c) of the Code.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: T:EO:RA:T:2, Room 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Joseph Chasin

Joseph Chasin
Acting Manager
Exempt Organizations
Technical Group 2

cc:

[Redacted]

[Redacted]

[Redacted]